

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**HEATHER FITZGERALD,**

**Plaintiff,**

**vs.**

**SAFECO INSURANCE COMPANY  
OF INDIANA,**

**Defendant.**

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**CIVIL ACTION NO.:** \_\_\_\_\_

**DEFENDANT’S NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §1446(a) and Local Rule CV-81(a), Defendant Safeco Insurance Company of Indiana (“Safeco” or “Defendant”) files this *Notice of Removal*, hereby removing this action from the 416th Judicial District Court, Collin County, Texas to the United States District Court for the Eastern District of Texas, Sherman Division. Removal is based on diversity jurisdiction because there is both complete diversity between Plaintiff Heather Fitzgerald (“Plaintiff”) and Safeco, and an amount in controversy is in excess of \$75,000.00, exclusive of interest and costs. In support of its *Notice of Removal*, Defendant respectfully shows the Court as follows:

**I.  
INTRODUCTION**

This dispute arises from Plaintiff’s claim for hail damage to her home located at 17504 River Hill Drive, Dallas, Texas 75287-7332, (the “Property”). Plaintiff alleges that Defendant breached a policy of insurance (the “Policy”) and violated certain provisions of the Texas Insurance Code and Texas Deceptive Trade Practices Act (“DTPA”) by, among other things, failing to pay Plaintiff’s claims for damages resulting from an alleged storm.

On May 8, 2017, Plaintiff filed her Original Petition in the 416th Judicial District Court, Collin County, Texas. Plaintiff served Safeco with a citation and a copy of Plaintiff's Original Petition on May 22, 2017 through its registered agent for service of process. On June 9, 2017, Defendant timely filed an answer to Plaintiff's Original Petition. This *Notice of Removal* is being filed within thirty (30) days of service of the Petition and is therefore timely filed under 28 U.S.C. §1446(b).

## **II.**

### **BASIS FOR REMOVAL**

#### **A. DIVERSITY OF CITIZENSHIP**

Removal is proper because there is complete diversity between the parties. *See* 28 U.S.C. § 1332(a). Plaintiff is a resident and citizen of Texas. *See* Plaintiff's Original Petition at ¶ 2.1. Safeco is a corporation organized under the laws of the State of Indiana with its principal place of business in Boston, Massachusetts. As such, Safeco is citizen of Indiana and Massachusetts. Accordingly, there exists complete diversity of citizenship between the parties.

#### **B. AMOUNT IN CONTROVERSY**

Generally, the amount in controversy for purposes of establishing federal jurisdiction should be determined by the plaintiff's complaint. *See De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1411-12 (5th Cir. 1995). Here, it is apparent from the face of Plaintiff's Original Petition that her claims exceed \$75,000.00. In paragraph 9.1 of Plaintiff's Original Petition, she states: "[a]ll the damages described and sought in this Petition are within the jurisdictional limits of the Court and exceed an aggregate amount of monetary relief over \$200,000 . . . ." Plaintiff's Original Petition at ¶ 9.1.

Therefore, removal of this action is proper under 28 U.S.C. § 1441(a). This is a civil action brought in state court, and this Court has original jurisdiction over the subject

matter pursuant to 28 U.S.C. § 1332(a). In addition, Plaintiff's citizenship is diverse from Safeco. Finally, as alleged in her Original Petition, Plaintiff seeks to recover in excess of \$200,000.00 from Defendant. Therefore, the amount in controversy in this case exceeds \$75,000.00.

**III.**  
**CONSENT TO REMOVAL UNNECESSARY**

Safeco is the only defendant named in Plaintiff's Original Petition. Thus, no additional consent is needed for removal.

**IV.**  
**COMPLIANCE WITH PROCEDURAL REQUIREMENTS**

As required by Local Rule CV-81, filed concurrently with this Notice of Removal is a completed civil cover sheet. Additionally, the following exhibits are attached:

- **EXHIBIT A:** Supplemental Civil Case Cover Sheet – listing all parties in this case and the current status of the state court proceeding; listing of attorneys in this case, including each such attorney's bar number, addresss, telephone number and party represented; and the name and address of the state court from which this case is being removed;
- **EXHIBIT B:** A certified copy of the Register of Actions in the state court action; and
- **EXHIBITS C-1 – C-2:** A copy of each document filed in the state court action.

Pursuant to Section 28 U.S.C. §1446(d), Defendant will give written notice of the filing of this *Notice of Removal* to all adverse parties promptly after the filing of same.

Pursuant to 28 U.S.C. §1446(d), Defendant will file a true and correct copy of this *Notice of Removal* with the District Clerk, Collin County, Texas promptly after filing of same.

V.  
**CONCLUSION AND PRAYER**

Based on the foregoing, Defendant Safeco Insurance Company of Indiana respectfully requests that the above-styled action now pending in the 416th Judicial District Court, Collin County, Texas be removed to the United States District Court for the Eastern District of Texas, Sherman Division. Defendant further requests all such other and further relief to which it is justly entitled.

Respectfully submitted,

*/s/ Mark D. Tillman*

MARK D. TILLMAN

State Bar No. 00794742

**TILLMAN BATCHELOR LLP**

1320 Greenway Drive, Suite 830

Irving, Texas 75038

Telephone: (214) 492-5720

Facsimile: (214) 492-5721

E-mail: mark.tillman@tb-llp.com

**ATTORNEYS FOR DEFENDANT  
SAFECO INSURANCE COMPANY OF  
INDIANA**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing has been forwarded to Plaintiff's counsel of record via electronic means and/or facsimile on June 21, 2017, in accordance with the FEDERAL RULES OF CIVIL PROCEDURE.

Jesse S. Corona  
THE CORONA LAW FIRM, PLLC  
521 N. Sam Houston Pkwy E, Ste. 420  
Houston, Texas 77060  
Telephone: (281) 882-3531  
Facsimile: (713) 678-0613  
jesse@theCoronaLawfirm.com

/s/ Mark D. Tillman  
MARK D. TILLMAN